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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Amendment of the Commission's
Rules to Establish New Personal
Communications Services

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GEN Docket No. 90-314

RM-7140, RM-7175, RM-7618

OPPOSITION TO
PETITIONS FOR RECONSIDERATION

PMN, Inc. ("PMN") hereby submits its Opposition to certain Petitions for Reconsideration of the Second Report and Order in the captioned proceeding, 8 FCC Rcd 7700 (1993) ("Second Report"). PMN also hereby registers its support for certain of the Petitions for Reconsideration of the Second Report that seek a relaxation or elimination of the cellular eligibility and attribution restrictions of Section 99.204 of the Commission's Rules.

In its Petition for Reconsideration, PMN advocated that the Commission modify its cellular eligibility and attribution rule to exempt limited partnership interests and consortia of such interests, particularly those held by independent local exchange carriers, for all PCS service areas. PMN continues to advocate such a position and believes that arguments advanced by other parties' Petitions for Reconsideration support its proposed change to the eligibility rule, as more fully set forth below. Also, PMN opposes several parties' proposals to modify the eligibility rule in ways that are contrary to PMN's recommendation.

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I. Persuasive arguments were advanced by other parties that support exempting limited partnership interests from the cellular eligibility and attribution rules.

In its Petition, PMN advanced three general arguments in support of exempting limited partnership interests in cellular licenses from the PCS cellular eligibility and attribution rules. One was that the eligibility and attribution restrictions are overreaching and would have an unintended adverse effect on certain entities, such as rural telephone companies and entities holding non-controlling and passive cellular interests. Second, the Commission's affirmative finding that local exchange carrier participation in PCS would bring specific advantages to the public should not be frustrated because of limited participation in cellular. Third, PMN's particular experience in cellular indicates the effects of the eligibility and attribution rules are overreaching and will yield results that are inconsistent with the stated purpose of that regulation.

Similar arguments were advanced by other parties to support relaxation of the cellular eligibility and attribution rules. Additional justification was offered that specifically supports PMN's position.

A. Limited partnership interests do not have access to cellular spectrum and cannot use cellular service to thwart competition.

By their very nature, limited partnership interests in cellular licensees do not operate the systems. Therefore, they do not have access to cellular spectrum that they could use to implement PCS service in the licensed area.¹ Furthermore, although the Commission bases its cellular eligibility limitation and attribution rule on potential undue exercise of

¹See Petition for Reconsideration of Telephone and Data Systems, Inc. ("TDS") at 6.

market power, it has not evaluated the PCS market or substantiated the claim that cellular carriers can or will exert undue market power.² Radiofone analyzed the Commission's concerns and showed that the significant number of anticipated mobile radio services in any given geographic area, in addition to cellular and PCS, such as Enhanced Specialized Mobile Radio and mobile satellite services, will ameliorate those concerns.³ That situation, along with PCS performance standards, will prevent warehousing of spectrum.⁴ Yet, it is only the cellular licensees that are being restricted in the provision of PCS. If the Commission has not adequately justified the basis for its broad, inclusive restriction on cellular participation, it certainly has not justified such a restriction on limited partnerships. Thus, it should at the very least lift such limitation on limited partnership interests. Otherwise, it cannot expect to sustain its policy on the unsubstantiated arguments that have been advanced in the Second Report.⁵

B. Cellular and PCS have substantial differences that will inhibit the use of cellular spectrum for PCS.

A number of differences can be drawn between cellular and PCS services. The currently pervasive analog cellular users will preclude wholesale conversion to digital technology, whereas PCS is expected to immediately implement digital technology.⁶ This

²See Petition for Partial Reconsideration of Radiofone, Inc. at 8-9.

³Id. at 9-12.

⁴Id. See also Petition for Reconsideration of BellSouth Corporation at 11-12.

⁵Id. at 12.

⁶See Petitions for Reconsideration of TDS at 6, Radiofone at 4-5.

will not only enable PCS to offer new and innovative services, but will also mean that substantial differences will exist between cellular interface standards and emerging PCS interface standards.⁷ Furthermore, it is widely expected that PCS licensees will provide services from the start that differ significantly from cellular in order to attract a broad base of customers.⁸

All of these differences demonstrate that a cellular licensee would not have an incentive to use a PCS license for anticompetitive purposes. Further consideration of these differences should at least form a basis for removing any limited partnership interests in cellular licensees from the cellular eligibility and attribution rules.

C. The Congressional mandate to develop and deploy new services to the public, particularly in rural areas, must be implemented.

In the Omnibus Budget Reconsideration Act of 1993 ("Budget Act"), Congress directed the Commission to promote the development and deployment of new technologies and services to the public, including in rural areas.⁹ A number of parties cited this Congressional mandate as a basis for rescission of the cellular eligibility restrictions as they apply to various entities.¹⁰

The arguments make particular sense in the case of entities that have the capability and experience to bring PCS to less densely populated areas. A substantial number of such

⁷See Petition for Reconsideration of TDS at 6.

⁸See Petition for Partial Reconsideration of Radiofone at 5-6.

⁹Section 309(j) (3).

¹⁰See Petition for Reconsideration of TDS at 7, Anchorage Telephone Utility ("ATU") at 2-3.

entities are independent telephone companies that have limited partnership interests in cellular licensees.¹¹ These activities should, at the very least, be removed from the Commission's cellular eligibility restrictions so that the independent telephone companies can fulfill the Congressional mandate of bringing service to less populated areas.

D. Limited partners have no cognizable interest and therefore no basis exists to restrict them in the provision of PCS.

Cincinnati Bell Telephone Company, et al. set forth a comprehensive analysis of limited partnerships which concludes that such entities have neither the ability nor the opportunity to control cellular operations.¹² By way of summary, limited partners lack the ability to control management or operations. Control is impossible for limited partners.¹³ Therefore, Cincinnati Bell advocates that the Commission follow the broadcast ownership rules that bar only cognizable interests.¹⁴ This analysis supports PMN's position of eliminating limited partners from any cellular eligibility rule that the Commission might otherwise retain.

¹¹See Petition for Reconsideration of PMN at 5. See also Petition for Reconsideration of GTE at 4-5.

¹²Petition for Reconsideration of Cincinnati Bell Telephone Company, Chickasaw Telephone Company, Illinois Consolidated Telephone Company, Millington Telephone Company and Roseville Telephone Company ("Cincinnati Bell") at 3-5.

¹³Id. at 12.

¹⁴Id. at 11.

II. The arguments of certain parties advanced to support modifications to the cellular eligibility rule that are contrary to PMN's interest actually justify its position.

A. Suggestions to increase the 10% overlap or the ownership limit would not meet PMN's concerns.

A number of parties argued that either the amount of overlap of cellular territory with PCS population be increased¹⁵ or the cellular ownership limit of an entity in a PCS license be increased or recalculated.¹⁶ While those parties set forth alternatives that attempt to relax the cellular eligibility rule for a variety of public interest reasons, a number of those alternatives fail to achieve the objective of bringing PCS service to less populated areas by allowing participation by those best suited to do so.

The particular problem with the eligibility restrictions is that even the increases proposed still will preclude entities such as PMN from providing PCS in the areas where their members have limited cellular interests. PMN members and similarly situated entities providing wireline telephone service in single or limited areas lack the geographic diversity that larger entities have.¹⁷ Due to this, they are at a considerable disadvantage because of these limited service areas. They should not be penalized for their cellular limited partnership participation; rather, they should be encouraged to provide PCS in their local service areas.

¹⁵Petitions for Reconsideration of Personal Network Services Corp. at 9-10, Florida Cellular RSA Limited Partnership at 5, Alliance of Rural Area Telephone and Cellular Service Providers at 9, Sprint Corporation at 2-12, and Cellular Telecommunications Industry Association ("CTIA") at 12-14 and 20-22.

¹⁶Petitions for Reconsideration of TDS at 3, fn. 3, Comcast at 15-16, and GTE at 3-5.

¹⁷See Petition for Reconsideration of Cincinnati Bell at 8.

While the basis for the increases in overlap or ownership are laudable, those proposed changes should be expanded to include PMN's proposal that removes cellular limited partnership interests from the eligibility restrictions.

B. Proposals to remove only non-wireline cellular carriers from the eligibility rules are based on a faulty premise and should not be granted.

Comcast advocated that non-wireline cellular carriers be allowed to fully participate in PCS on the basis that PCS's main competitor is the local exchange carrier, particularly the Regional Bell Operating Company, and not the cellular providers.¹⁸ Comcast carries this position so far as to argue that if the Commission does not completely eliminate the non-wireline eligibility restriction, then non-wireline cellular carriers should be given an exemption to fully participate with designated entities in PCS.¹⁹

It is Comcast who is mistaken, not the Commission. The issue of local exchange carrier participation in PCS has been fully argued in this proceeding. Based on the evidence before it, the Commission recognized that PCS offers a technology that will provide opportunities to bring efficient and economical communications services to the public.²⁰

The Commission should affirm its determination regarding local exchange carrier eligibility and should modify its cellular eligibility restrictions for all entities, not only those with non-wireline affiliations, to allow such entities with limited partnership interests to fully participate in PCS as licensees.

¹⁸Petition for Reconsideration of Comsact Corporation at 3-10.

¹⁹Id. at 18.

²⁰Second Report at 7747-7752.

III. Efforts of certain parties to clarify the attribution rule do not take into account the public interest arguments for exempting independent local exchange carrier interests from that restriction.

Comcast argued that the attribution rule should be clarified in order to eliminate uncertainty and waste from the PCS auction and licensing process.²¹ Both Comcast and BellSouth suggested modified attribution calculations that would either "focus on ownership, rather than control"²² or "fairly take into account multiple party holding interests."²³

The flaw in these proposals is that they do not adequately address the situation with which PMN members and similar entities are faced. As PMN has described,²⁴ PMN's participating entities are each independently owned local exchange carriers within a single state. They and similarly situated local exchange carriers were at an extreme disadvantage during the cellular lottery process. As a result, they now hold small individual interests in RSA cellular licenses within their state. Together, in the formation of PMN, they combined their efforts to partially protect their interests. Now, the Commission's attribution rule would preclude them from full participation in PCS. Similarly, the proposed modifications of Comcast and BellSouth would do little to address this situation. The Commission should recognize the severe impact its attribution rule will have on entities such as PMN members and remove independent local exchange carriers from the attribution restrictions. Such action would be consistent with the Congressional mandate of promoting new technologies

²¹Petition for Reconsideration of Comcast at 12-18.

²²Id. at 13.

²³Petition for Reconsideration of BellSouth Corporation at 15.

²⁴Petition for Reconsideration of PMN at 507.

and service to the public, particularly in rural areas.²⁵

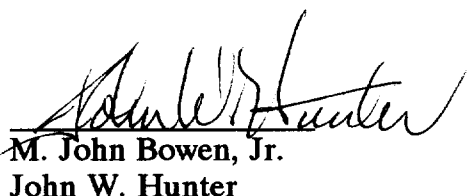
IV. Conclusion

PMN continues to request that the Commission remove the limited partnership interests and consortia of such interests, particularly those held by independent local exchange carriers, from the cellular eligibility and attribution policies found in Section 99.204 of the Commission's Rules, for all PCS service areas. In addition, PMN urges the Commission to deny those other modifications to the cellular eligibility restrictions and attribution rules that are inconsistent with PMN's position.

Respectfully submitted,

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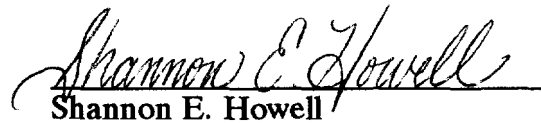
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January 3, 1994

²⁵Section 309(j)(3) of the Budget Act.

CERTIFICATE OF SERVICE

I, Shannon E. Howell, hereby certify that a copy of the foregoing Opposition to Petitions for Reconsideration of PMN, Inc. was mailed, postage prepaid, first-class United States mail, this third day of January, 1994, to the parties on the attached list.


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